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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/548,308	04/12/2000	Jeff Wasilko	2585-003	6174

7590 12/12/2003

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EXAMINER
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BOUTAH, ALINA A

ART UNIT	PAPER NUMBER
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2143

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DATE MAILED: 12/12/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

PR4

# Office Action Summary

Application No.

09/548,308

Applicant(s)

WASILKO, JEFF

Examiner

Alina N Boutah

Art Unit

2143

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 22 September 2003.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-20 and 23-26 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 5,6,10-13,18 and 23-26 is/are allowed.
- 6) ☒ Claim(s) 1-4,7-9,14-17,19 and 20 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.  
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All b) ☐ Some \* c) ☐ None of:  
1. ☐ Certified copies of the priority documents have been received.  
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).  
\* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).  
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

## Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_ 6) ☐ Other: \_\_\_\_\_

Art Unit: 2143

## **DETAILED ACTION**

### ***Response to Amendment***

This action is in response to Applicant's amendment received September 30, 2003. Claims 21 and 22 have been cancelled. Claims 1-20 and 23-26 are pending in the present application.

### ***Specification***

The word "caching" in the title was misspelled. Applicant has amended the title to correct the Examiner's objection. The objection is now withdrawn.

### ***Claim Rejections - 35 USC § 112***

-Applicant's argument has been considered and is found persuasive. The rejection of claim 26 under second paragraph of 35 U.S.C. 112 is now withdrawn.

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1, 2, 14, and 15 are rejected under 35 U.S.C. 103(a) as being unpatentable over USPN 5,951,636 issued to Zerber in view of USPN 5,278,984 issued to Batchelor.

Regarding claims 1 and 14, Zerber teaches a method of moderating traffic load on network servers in a network where electronic mail is retained from at least one mail server, the method comprising:

permitting a mail request for a mail client to pass through a proxy server to the mail server (Abstract; figures 1 and 2).

Zerber fails to teach delaying subsequent mail requests for the mail client at the proxy server until a predetermined condition has been satisfied.

Batchelor teaches queuing and delaying mail requests at a server until a predetermined condition has been satisfied (Abstract; col. 1, lines 27-28; lines 56-66; col. 2, lines 4-6; 58-61).

At the time the invention was made, it would have been obvious to one of ordinary skill in the art to combine the teaching of Zerber with the teaching of Batchelor by delaying mail request until a predetermined condition has been satisfied in order to prioritize messages so that the sequence of execution and access to resource can be determined, therefore providing optimum performance to the system (col. 1, lines 27-33).

Regarding claims 2 and 15, Zerber fails to teach the method of claim 1, wherein the predetermined condition is a predetermined period of time. Batchelor teaches the predetermined condition being a predetermined period of time (title; col. 1, lines 26-28; col. 2, lines 45-49). At the time the invention was made, it would have been obvious to one of ordinary skill in the art to employ a predetermine period of time in order to delay mail request in order to order to prioritize messages so that the sequence of execution and access to resource can be determined, therefore providing optimum performance to the system (col. 1, lines 27-33).

Claims 3 and 16 are rejected under 35 U.S.C. 103(a) as being unpatentable over USPN 5,951,636 issued to Zerber in view of USPN 5,987,504 issued to Toga.

Regarding claims 3 and 16, Zerber fails to teach the method of claim 2 wherein the predetermined period of time is dynamically determined based on the amount of traffic load on the network. Toga teaches retrieving data at a future time when network traffic is lower (Abstract; col. 2, line 61- col. 3, line 10). At the time the invention was made, it would have been obvious to one of ordinary skill in the art to enable the predetermined period of time based on a the amount of traffic load because it would be more economical to send mail the client when usage is lower and bandwidth is higher (col. 3, lines 15-23).

Claims 4 and 17 are rejected under 35 U.S.C. 103(a) as being unpatentable over USPN 5,951,636 issued to Zerber in view of USPN 5,278,984 issued to Batchelor in further view of USPN 5,765,033 issued to Miloslavsky.

Regarding claims 4 and 17, Zerber and Batchelor fail to teach the method of claim 2, wherein the predetermined period of time is dynamically determined based on past behavior of the mail client. Miloslavsky teaches storing a history of activities in electronic routing system (Abstract; col. 2, lines 23-26). At the time the invention was made, it would have been obvious to one of ordinary skill in the art to determine the predetermined period of time based on past behavior of the mail client in order to facilitate that the proxy server in making a decision on sending a mail request to the client (col. 2, lines 26-27).

Art Unit: 2143

Claim 7 and 19 are rejected under 35 U.S.C. 103(a) as being unpatentable over USPN 5,951,636 issued to Zerber in view of USPN 5,278,984 issued to Batchelor in further view of USPN 5,956,521 issued to Wang.

Regarding claims 7 and 19, Zerber fails to teach the method of claim 1, wherein the predetermined condition is a combination of a predetermined time period and receipt of a notification from the mail server that mail has been received for the mail client at the mail server. Batchelor teaches the predetermined condition being a combination of a predetermined time period (title; col. 1, lines 26-28; col. 2, lines 45-49).

Zerber and Batchelor fail to teach the predetermined condition being a receipt of a notification from the mail server for the mail client at the mail server. Wang teaches a server receiving a mail message and notifies the message to a mail client (Abstract; col. 2, lines 32-43). At the time the invention was made, it would have been obvious to one of ordinary skill in the art to combine the teaching of Batchelor and Wang into the teaching of Zerber by having the mail server notify the mail client of its receipt of mail in order let the user know that there is mail waiting for him or her so that will allow him/her to check the mail.

Claims 8, 9, and 20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Zerber in view of Batchelor in view of Wang in further view of Miloslavsky.

Regarding claims 8 and 20, Zerber, Batchelor, and Wang fail to teach the method of claim 7, wherein the predetermined period of time is dynamically determined based on the

Art Unit: 2143

amount of traffic load on the network. Miloslavsky teaches storing a history of activities in electronic routing system (Abstract; col. 2, lines 23-26). At the time the invention was made, it would have been obvious to one of ordinary skill in the art to determine the predetermined period of time based on past behavior of the mail client in order to facilitate that the proxy server in making a decision on sending a mail request to the client (col. 2, lines 26-27).

Regarding claim 9, Zerber, Batchelor, and Wang fail to teach the method of claim 7, wherein the predetermined period of time is dynamically determined based on past behavior of the mail client. Miloslavsky teaches storing a history of activities in electronic routing system (Abstract; col. 2, lines 23-26). At the time the invention was made, it would have been obvious to one of ordinary skill in the art to determine the predetermined period of time based on past behavior of the mail client in order to facilitate that the proxy server in making a decision on sending a mail request to the client (col. 2, lines 26-27).

***Allowable Subject Matter***

Regarding claims 5, 10, and 18 have been rewritten in independent forms including all of the limitations of the base claims and intervening claims, therefore are in condition of immediate allowance.

Claim 6 depends on claim 5, therefore is also allowable.

Regarding claims 11 and 25 have been rewritten in independent forms including all of the limitations of the base claims and intervening claims, therefore are in condition of immediate allowance.

Regarding claims 12 and 23 have been rewritten in independent forms including all of the limitations of the base claims and intervening claims, therefore are in condition of immediate allowance.

Regarding claims 13 and 24 have been rewritten in independent forms including all of the limitations of the base claims and intervening claims, therefore are in condition of immediate allowance.

Claim 26 has been allowed in the previous Office Action dated March 18, 2003.

#### ***Response to Arguments***

Applicant's arguments filed September 22, 2003 have been fully considered but they are not persuasive.

Applicant argues that neither Zerber nor Batchelor teaches or suggests the use of a proxy server to selectively pass or delay email requests. The Patent Office respectfully submits that this limitation is taught in the abstract, as well as figure 3, reference number 52 of the Zerber reference. Although Zerber does not expressly teach the use of "proxy server," one of ordinary



skill in the art would have recognized that the “local HTTP server” is equivalent to the “proxy server” as specified in Applicant’s specification because they perform the same function in substantially the same way to reach substantially the same result.

As to Batchelor, Applicant argues that the queuing system it discloses does not suggest the claimed invention because it is directed to prioritization of how messages are sent out TO a post office system, not how the messages are sent out FROM the post office system in the event they may have arrived. Applicant also argues that the queuing system disclosed by Batchelor has no applicability whatsoever to the claimed actions of selectively permitting or delaying POP checks directed to a mail server. In response to applicant's argument that the references fail to show these features of applicant’s invention, it is noted that the features upon which applicant relies (i.e., how the messages are sent FROM the post office, and delaying POP checks) are not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

For the above reasons, the rejection of claims 1-4, 7-9, 14-17, and 19-20 are sustained.

### ***Conclusion***

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

Art Unit: 2143

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Alina N Boutah whose telephone number is (703) 305-5104. The examiner can normally be reached on Monday-Thursday (9:00 am-7:00 pm).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, David A Wiley can be reached on (703) 308-5221. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 305-3900.



ANB



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